NOTES OF CASES.

Banks and Banking—Stamping Check "Paid" as Constituting Payment or Acceptance.—In Hunt *v.* Security State Bank, 179 Pac. 248, the Supreme Court of Oregon held that the fact that a bank after satisfying itself that a check was genuine, and that there were sufficient funds to pay it, stamped it "Paid," and placed it upon a spindle, did not constitute "payment" which would deprive depositor of the right to countermand the check. It was also held that such acts did not constitute "acceptance" of the check.

The court said: "When Hunt ordered the defendant not to pay the check the bank had done nothing more than to satisfy itself that the check was genuine, and that there was sufficient funds to pay it, and to stamp it 'Paid,' and to place it upon the spindle. All this was merely preparing to pay; it was simply a step towards payment; it was not payment. No entry was made on the books. The drawer was not charged; the holder was not credited. It may be assumed that the bank intended to make appropriate entries on its books and to remit, but we are confronted with a situation where the bank had not yet executed its intention. An intention to pay is not payment. What the bank did was done in contemplation of payment, but payment was not completed. Guthrie National Bank *v.* Gill, 6 Okl. 560, 54 Pac. 434; First National bank of Murfreesboro *v.* First National Bank of Nashville, 127 Tenn. 205, 154 S. W. 965; German National Bank *v.* Farmers' Deposit National Bank, 118 Pa. 294, 12 Atl. 303; Irving Bank *v.* Wetherald, 36 N. Y. 335, 338; Watervliet Bank *v.* White, 1 Denio (N. Y.) 608, 611; National Bank of Rockville *v.* Second National Bank of Lafayette, 69 Ind. 479, 485, 35 Am. Rep. 236.

"The plaintiff cannot recover if what was done by the defendant resulted in an acceptance of the check. While we are accustomed to associate the word 'acceptance' with bills of exchange rather than with checks, for the reason that bills of exchange ordinarily contemplate presentation for acceptance and acceptance, and checks ordinarily contemplate presentation for payment and payment, and although there are points of difference between the two classes of instruments, yet it will tend to promote the harmony and preserve the integrity of the Negotiable Instruments Act (L. O. L. §§ 5834-6027) if we use the nomenclature employed by that statute. Hawley, Dodd & Co. *v.* Jette & Clark, 10 Or. 31, 45 Am. Rep. 129; First National Bank *v.* Commercial Savings Bank, 74 Kan. 606, 87 Pac. 746, 8 L. R. A. (N. S.) 1148, 118 Am. St. Rep. 340, 342, 11 Ann. Cas. 281; Van Buskirk *v.* State Bank of Rocky Ford, 35 Colo. 142, 83 Pac. 778, 117 Am. St. Rep. 182; 8 C. J. 38, 40; Selover on Negotiable Instruments (2d Ed.) 117; 3 R. C. L. 831. See note in 118 Am. St. Rep. 348, and 5 R. C. L. 516. The Negotiable Instruments Act defines

a bill of exchange (section 5959, L. O. L.); and it declares not only that 'a check is a bill of exchange drawn on a bank payable on demand,' but also that, 'except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check' (section 6018, L. O. L.).

"Among the provisions applicable to bills of exchange, and therefore applicable to checks, is section 5965, L. O. L., which states that 'the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.' Van Buskirk *v.* State Bank of Rocky Ford, 35 Colo. 142, 83 Pac. 778, 117 Am. St. Rep. 182; 8 C. J. 308.

"The 'acceptance' of a bill of exchange is the act by which the drawee manifests his consent to comply with the request contained in the bill of exchange directed to him, and it contemplates an engagement or promise to pay. Van Buskirk *v.* State Bank of Rocky Ford, 35 Colo. 142, 83 Pac. 778, 117 Am. St. Rep. 182, 184; Guthrie National Bank *v.* Gill, 6 Okl. 560, 565, 54 Pac. 434; First National Bank *v.* Commercial Savings Bank, 74 Kan. 606, 87 Pac. 746, 8 L. R. A. (N. S.) 1148, 118 Am. St. Rep. 340, 11 Ann. Cas. 281; Elyria Savings & Banking Co. *v.* Walker Bin Co., 92 Ohio St. 406, 111 N. E. 147, L. R. A. 1916D, 433, Ann. Cas. 1917D, 1055; 2 Michie on Banks and Banking, 1125; 3 R. C. L. 534; 8 C. J. 296. * * * The acceptance of a bill of exchange is usually evidenced by writing the word 'accepted' on the face of the bill, and the certification of a check is usually effected by writing or stamping the word 'good' or 'certified'; but the law does not require any particular form of word or words to constitute an acceptance, and any words or expressions intended to be an acceptance by the bank will be sufficient. 8 C. J. 303; 3 R. C. L. 1304; 5 R. C. L. 520; Selover on Negotiable Instruments (2d Ed.) 134; First National Bank *v.* Commercial Savings Bank, 74 Kan. 606, 87 Pac. 746, 8 L. R. A. (N. S.) 1148, 118 Am. St. Rep. 340, 11 Ann. Cas. 281; 7 C. J. 705; Magee on Banks & Banking (2d Ed.) 319. It was held in Plaza Farmers' Union Warehouse & Elevator Co. *v.* Ryan, 78 Wash. 124, 138 Pac. 651, that the written signification of assent, required by the Negotiable Instruments Law, 'means an express assent or the use of words necessarily implying an assent.' See, also, 8 C. J. 307.

"The word 'Paid' was stamped upon the check by the defendant. When determining whether this constituted an acceptance within the meaning of the law, we must not forget the essential difference between payment and acceptance. Payment ends the life of a check. Acceptance reinvigorates it. The word 'Paid' tends to indicate, if it evidences anything, extinction rather than rejuvenation of the check. To the extent that it speaks at all, the word 'Paid' tells of what has been done rather than of what will be done. In Guthrie National Bank *v.* Gill, 6 Okl. 560, 565, 54 Pac. 434, 436, it was decided that the

word 'Paid' stamped upon a draft 'had no tendency to establish an acceptance,' because it did not evidence 'an agreement or promise to do something.' To the same effect is Elyria Savings & Banking Co. *v.* Walker Bin Co., 92 Ohio St. 406, 111 N. E. 147, L. R. A. 1916D, 433, Ann. Cas. 1917D, 1055, 1056. See, also, 2 Michie on Banks and Banking, 1129. Stamping the word 'Paid' did not of itself produce an acceptance of the check."

Descent and Distribution—Inheritance by Slayer of Victim's Property.—In Hamblin *v.* Marchant, 175 Pac. 678, the Supreme Court of Kansas held that sec. 3856 of the Kansas General Statutes of 1915, providing that one who wrongfully takes the life of another cannot acquire the latter's property by inheritance or devise, applies to a woman who kills her husband by shooting him, for which she is afterward convicted of manslaughter in the third degree.

The court said: "On July 10, 1915, John A. Marchant owned an undivided one-half interest in the land in controversy. On that day he was shot and killed by defendant Edna Marchant, who was then his wife. They had no children. Edna Marchant was afterwards convicted of manslaughter in the third degree for killing her husband. Edna Marchant claims that she is the only heir of John A. Marchant, deceased, and that she is therefore the owner of an undivided one-half interest in the real property. She claims that section 3856 of the General Statutes of 1915 does not apply to persons convicted of manslaughter in the third degree. That section reads: 'Any person who shall hereafter be convicted of killing or of conspiring with another to kill, or of procuring to be killed, any other person from whom such person so killing or conspiring to kill or procuring said killing would inherit the property, real, personal, or mixed, or any part thereof belonging to such deceased person at the time of death, or who would take said property by deed, will or otherwise, at the death of the deceased, shall be denied all right, interest and estate in or to said property or any part thereof, and the same shall descend and be distributed to such other person or persons as may be entitled thereto by the laws of descent and distribution, as if the person so convicted were dead.'

"In McAllister *v.* Fair (72 Kan. 533, 84 Pac. 112, 3 L. R. A., N. S., 726, 115 Am. St. Rep. 233, 7 Ann. Cas. 973), decided in 1906, this court declared that a husband inherits his intestate wife's property, although he killed her for the purpose of acquiring that property. The 1907 session of the legislature passed the statute quoted, apparently for the purpose of changing the rule of law declared by the court. The language of the statute is broad and includes every person who may take property from a deceased person in either of the